

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 24 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NARBHERAM RANCHHODBHAI

Versus

VALLABHJI RANCHHODBHAI MEHTA

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Appearance:

MR YV BRAHMBHATT for Petitioners

MR BD KARIA for Respondent No. 1

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 16/07/97

ORAL JUDGEMENT

Heard Mr.Brahmbhatt for the petitioners and Mr.Karia for the respondent. Notice had been issued in this matter on 18/1/1997. Both the advocates have made their submissions. Rule on this application which is made returnable forth with and the submissions of the advocates are considered.

The respondent herein has filed Special Civil

Suit No. 62 of 1986 which is pending adjudication before 2nd Joint Civil Judge (Senior Division) at Junagadh. The respondent plaintiff has sought partition of the property and sought his shares.

In that view of the matter, issues came to be framed on 20th September, 1990 but subsequently, on the application of the plaintiff dt. 3/9/1996, those issues came to be modified and by an order dt. 13/9/1996, issues Nos. 1 and 2 therefrom came to be deleted and some additional issues were framed in between on 31/8/1996 being Issue Nos. 3A, 3B, and 3C. Those issues came to be deleted, by the order dt. 13/9/1996, leaving final issue Nos. 3,4 and 5 framed on 20th September, 1990 in the file. This is apart from six issues, which the plaintiff had sought by an application dt. 3/9/1996 which came to be granted by order dt. 13/9/1996. Result was that these six issues as sought to be added by application dt. 3/9/1996 and issue Nos. 3,4 and 5 of 20th September, 1990 remained in the file. Being aggrieved by that order, this Civil Revision Application has been filed.

Mr. Brahmabhatt submitted that he has no objection with respect to those six issues sought by an application dt. 3/9/1996. However there was no reason to delete first two issues framed on 20th September, 1990. This is because the suit was filed by the respondent plaintiff for partition, and therefore, those issues were absolutely necessary. Mr. Karia, learned advocate appearing for the respondent plaintiff tried to point out that in view of the written statement of the defendants/petitioners herein, it was not necessary to frame those issues. Having perused the written statement, I do not think so because those two issues were very much necessary. In fact, they ought to have been decided first in a suit for partition. Hence this Civil Revision Application is partly allowed and order dt. 13/9/1996 is modified to the extent it deletes Issues Nos. 1 and 2 framed on 20th September 1, 1990. The remaining part of the order will survive. The result will be that the trial will proceed with the issues framed on 20th September, 1990 alongwith the issues sought by an application on 3rd September, 1996 being Ex. 61. This Civil Revision Application is accordingly allowed, with no order as to costs. Status quo granted earlier stands vacated.

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